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ALEXANDER L. STEVENS

CLERK

No. 84-501

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

BARRY MINTZES,

Petitioner,

v

NEALY BUCHANON,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

SUGGESTION OF MOOTNESS

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NOW COMES Petitioner, by and through his attorneys, Frank J. Kelley, Attorney General for the State of Michigan, Louis J. Caruso, Solicitor General, and Eric J. Egan, Assistant Attorney General, and pursuant to the rules of this Honorable Court hereby states the following circumstances evidencing mootness:

1. On September 27, 1984, Petitioner filed an application for writ of certiorari in this Honorable Court.
2. On October 24, 1984, a writ of certiorari issued.
3. On December 7, 1984, Respondent Nealy Buchanan died in the Ingham County, Michigan, Medical Center, of complications arising from a cancerous tumor.
4. Petitioner is compelled to suggest that the instant cause has been rendered moot by Mr. Buchanan's death. In a conversation between counsel on December 10, 1984, counsel for Respondent, Mr. Frank Eaman, indicated his concurrence in the instant suggestion of mootness. Counsel for Respondent does not concur in the relief requested by Petitioner.

5. The parties concur in a request that the briefing schedule heretofore established be held in abeyance pending disposition of the Court on the issue of mootness. In a conversation with the Clerk of the Court, Alexander Stevas, December 7, 1984, counsel was informed that the schedule would be held in abeyance.

6. If this Court concludes that this case is moot, Petitioner suggests the appropriate resolution of the case would be to vacate the judgments of the Court of Appeals and District Court and remand with directions to dismiss the complaint for habeas corpus as moot. *Knapp v Baker*, 509 F2d 922 (CA 5, 1976). See, *United States v Munsingwear*, 340 US 36 (1950). Unlike *Warden, Green Haven State Prison v Palermo*, 431 US 911 (1977), this Court has already recognized the significance of the issues in this case by granting certiorari and under these circumstances it would be unjust to permit the erroneous judgments of the Court of Appeals and District Court to remain in effect.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, Petitioner suggests that this case is moot because of the Respondent's death, and if the Court concludes that the case is moot, Petitioner

respectfully requests this Court to vacate the judgments of the Court of Appeals and District Court and remand the case with directions to dismiss as moot.

Respectfully submitted,

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Dated: December 11, 1984